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Summary of 2007 Brownfields Amendments - HEA 1192 - Effective 7/1/07

Prior to the 2007 legislative session, the Indiana Brownfields Program (Program), as part of a continuing effort to facilitate brownfields redevelopment in communities across Indiana, identified several modifications to Indiana statutes that would provide more flexibility to communities looking to undertake brownfields redevelopment, as well as better access to state financial and technical assistance. The Program assembled a legislative proposal (SB 433) to address lingering concerns about liability, improve Program operations and offerings, and establish a connection with other economic development authorities. The legislation passed as a part of HEA 1192 and its provisions are summarized below.

I. Increased the cap on financial assistance available to political subdivisions under IC 13-19-5-9(d) to 50%

A. Statutory cap on amount of financial assistance (loans and grants) available to a political subdivision in a year increased from 10% of the money available in the Brownfields fund to 50%.

B. Clarified the limitation/calculation period as the state fiscal year (July 1st – June 30th).

II. Expansion and Clarification of Program Purpose to Include Use of Petroleum Remediation Grant Funds for Assessment; Clearance of Real Property; Other Activities to Prepare a Brownfield for Redevelopment

A. Expands permissible use of fund money to include:

- i. assessment of petroleum contamination (had been limited to remediation for petroleum contamination)
- ii. other activities “necessary or convenient to complete remediation activities conducted on brownfields, including clearance of real property”
- iii. other activities “necessary or convenient to prepare a brownfield for redevelopment”

B. Demolition and site-grading may be permissible activities using fund money.

III. Addition of Authority for Program to Develop an Insurance Program and Enter into Agreements with Political Subdivisions to Manage Assessment and Remediation Activities

- A. IFA may now undertake activities to make private insurance products available to encourage and facilitate cleanup and redevelopment of brownfields.
- B. IFA may now enter into agreements with political subdivisions to manage assessment and remediation activities (under IC 36-1-7, Interlocal Cooperation Act)
- C. The IFA is afforded liability protection for activities related to its investigation and remediation of contamination under any such agreement.

IV. Fees

- A. IFA's fee authority is expanded to make fee assessment applicable to all stakeholders (not just political subdivisions) and for all types of assistance provided by the program (financial, technical or legal).
- B. IFA is currently authorized to charge fees to political subdivisions for costs related to financial assistance. This has never been utilized. Other states, however, charge fees for a variety of services to supplement funding sources for program operations and the Program may seek to develop a fee-based structure for program activities and deliverables in the future.
- C. IFA will be required to adopt guidelines for the assessment of fees to ensure fee structure is not arbitrary or capricious.

V. Political Subdivision Liability

- A. Notwithstanding existing liability exemptions, political subdivisions continue to have concern about ownership of environmentally impaired property because of unease about whether activities they undertake on sites will undo their liability protection.
- B. Modifies definitions of owner and operator for hazardous substances and petroleum remediation statutes and existing liability exemption language to clarify that a political subdivision may investigate or remediate contamination and monitor or close underground storage tanks without being deemed to "operate" or contribute to existing contamination unless such contamination is exacerbated due to gross negligence or willful misconduct.

VI. Redevelopment Authorities

- A. Existing redevelopment authorities for cities, counties and redevelopment commissions do not make express reference to addressing environmentally impaired properties, yet do reference elimination of environmental deficiencies on properties in an “area needing redevelopment.”
- B. Amends both brownfields and redevelopment statutes to draw a clearer link where the purposes of the statutes clearly compliment each other.
 - Amends the definition of “area needing redevelopment” to include an area where normal development is impossible because of environmental contamination.
 - Makes permissible investigation and remediation activities as redevelopment activities.
 - Authorizes cities, counties and redevelopment commissions to contract with the Program to clear real property, investigate or remediate contamination, or repair and maintain structures for redevelopment purposes.
- C. Makes more express the link between existing redevelopment authorities for cities, counties and redevelopment commissions and brownfield redevelopment activities.

VII. New Exemption from Liability for Certain Nonprofit Corporations

- A. Exempts a very limited category of nonprofits whose primary purpose is to assist and support a political subdivision in a matter of public concern, and that acquires ownership to assist and support a political subdivision’s revitalization and reuse of a brownfield for non-commercial purposes, including conservation, preservation and recreation (e.g., a local parks and recreation foundation).
- B. If the nonprofit causes or contributes to the contamination, it will be subject to liability in the same manner and to the same extent as any other responsible party.
- C. Allows local nonprofits that directly support a community program (like a parks department) to acquire contaminated property as part of a community-lead, non-commercial redevelopment project without having to satisfy the *bona fide prospective purchaser* exemption to be exempt from liability.